

REMARKS

As of the Office Action issued December 22, 2008, Claims 104, 109-111, 114, 119, 130, 139, 149-153, and 159-174 were pending in the application and were finally rejected. With this reply, Claims 114, 119, 130, 159-163, and 169-174 are cancelled. The remaining claims are not otherwise amended. Upon entry of the amendments, Claims 104, 109-111, 139, 149-153, and 164-168 remain pending.

Entry of Amendments After a Final Rejection

Entry of the amendments cancelling claims is proper after a Final Rejection because the amendments place the claims in a state of allowability or at least in better condition for appeal. Upon entry of the amendments, independent Claims 104 and 139 remain pending.

With this Amendment, Applicants offer a Supplemental Oath/Declaration and address a double patenting rejection, which also place the claims in better condition for appeal. Applicants respectfully request acceptance and entry of these amendments as discussed below.

Oath/Declaration

In response to the outstanding rejection, Applicants submit a Supplemental Oath/Declaration curing the defects. In particular, the enclosed Oath or Declaration

- a) identifies the foreign application on which priority is claimed pursuant to 37 CFR § 1.55 by specifying the application number, country, day, month, and year of its filing.
- b) identifies at least one error relied upon to support the reissue application and
- c) contains a statement that every error corrected up to the present date and covered by a prior oath/declaration arose without any deceptive intention.

Applicants respectfully request that the rejection be withdrawn.

Rejection Under 35 U.S.C. § 251

Claims 104, 109, 114, 130, 135, 136, 139, 144, 145, and 149-168 are rejected as being an improper recapture of subject matter allegedly given up during prosecution of the original claims. Applicants believe the Examiner may intend to apply the rejection against Claims 109, 110, and 119. In any case, Applicants respectfully traverse the rejection as applied to the amended claims and request it be withdrawn on the basis of the following discussion and their arguments in the amendment filed December 3, 2007. The current claims do not represent an impermissible recapture under 35 U.S.C. § 251.

Briefly, broadened claims avoid the recapture issue if broadening aspects are not related to subject matter given up during prosecution. And even if claims have broadening aspects related to surrendered subject matter, the recapture issue is avoided notwithstanding those broadening aspects if the claims contain narrowing aspects that are not totally unrelated to rejections addressed during prosecution.

For the reasons discussed in their December 3, 2007 Amendment, Applicants urge that the current claims in the Reissue Application contain narrowing aspects not totally unrelated to the rejections. The claims contain a limitation that the compression deformable temperature is below the melting temperature. Had such a limitation been present or offered by amendment during the original prosecution, the claims would have further distinguished over the references cited.

For this reason, the narrowing aspect (temperature below the melting point) is not completely unrelated to the rejections. For these reasons, Applicants respectfully submit the claims are not an improper recapture of surrendered subject matter and respectfully request the rejection be withdrawn.

Rejection Under 35 U.S.C. § 103

Claims 104, 109-111, 114, 119, 130, 139, 149-153, 159 and 168-174 stand rejected under 35 U.S.C. § 103(a) as obvious over U.S. Patent No. 5,030,402, *Zachariades*, issued July 9, 1991 (herein "*Zachariades*") in view of U.S. Patent No. 3,886,056, *Kitamura*, issued May 27, 1975 (herein "*Kitamura*"). This rejection is respectfully traversed with respect to pending Claims 104, 109-111, 139, 149-153, and 164-168.

Applicants note that the current obviousness rejection is based on application of the two references in a different way than addressed by Applicants in their December 3, 2007 amendment. In the current rejection, *Zachariades* is applied as primary, while *Kitamaru* is applied as secondary to make up for the deficiencies of *Zachariades*. Applicants maintain their position that, regardless of how the two references are combined, there is no apparent reason to combine them as suggested in the final rejection unless the current specification is impermissibly used as a guide.

Zachariades discloses compression molding of non-crosslinked UHMWPE. To arrive at the subject matter of the current claims, an apparent reason or motivation must be found to crosslink the UHMWPE before compression molding. The Examiner's position seems to be that the motivation is now provided by *Kitamaru*, which discloses heating and extending a crosslinked UHMWPE to form a kind of extended structure such a fiber. But this teaching does not provide any reason for a person of skill in the art to modify *Zachariades* to crosslink a UHMWPE before compression. In fact, because *Kitamaru* teaches extending (stretching) a crosslinked UHMWPE after heating to a compression deformable temperature, it actually teaches away from compressing the crosslinked UHMWPE. For these reasons and those discussed in their December 3, 2007 Amendment, Applicants respectfully request the art rejection be withdrawn.

Double Patenting Rejection

Claims 104, 109-111, 114, 119, 130, 139, 149-153, and 159-174 are rejected for obviousness-type double patenting over claims of co-pending Application Serial No. 11/522,504. Applicants respectfully traverse the rejection and request reconsideration.

Applicants believe that in this situation, the current application can issue as a patent without filing a terminal disclaimer as to the co-pending case. MPEP § 804 addresses the situation where the co-pending case is the later filed. The MPEP states

If a “provisional” nonstatutory obviousness-type double patenting (ODP) rejection is the only rejection remaining in the earlier filed of the two pending applications, while the later filed application is rejectable on other grounds, the Examiner should withdraw that rejection and permit the earlier filed application to issue as a patent without a Terminal Disclaimer.

By the current amendment, Applicants have demonstrated that the current claims are allowable except for the obviousness-type double patenting rejection. In such a situation, the ODP rejection is the only one remaining in the earlier filed of the two pending applications, according to MPEP § 804. Should Applicants prevail in their arguments, either After Final or on Appeal, the current case will be allowable even without filing a terminal disclaimer.

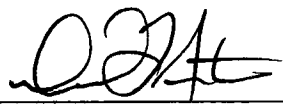
For these reasons, Applicants respectfully submit a terminal disclaimer is not needed in order to pass the claims onto a state of allowability. Applicants respectfully request the obviousness-type double patenting rejection be withdrawn.

Conclusion

Applicants believe that the pending claims are in an allowable condition and respectfully request an early Notice of Allowance. In the alternative, Applicants request an Advisory Action stating whether the amendments can be entered or the remarks considered after a final rejection. Applicants submit the amendments place the claim in better condition for appeal and respectfully request their entry before proceeding to an appeal and a request for pre-appeal brief review. The Examiner is invited to telephone the undersigned if that would be helpful to resolving any issues.

Respectfully submitted,

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